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Legal 203-9-15

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-316-C**

In the Matter of

Petition of BellSouth Telecommunications, Inc. to Establish
Generic Docket to Consider Amendments to Interconnection
Agreements Resulting from Changes of Law Docket

)
) **ORDER REQUIRING**
) **BELLSOUTH TO**
) **COMPLY WITH**
) **CHANGE OF LAW**

ORDER

Several filings are before the Public Service Commission of South Carolina (the "Commission") in Docket No. 2004-316-C. The Petition for Emergency Relief (the "Emergency Petition") filed by NuVox Communications, Inc., Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, Xspedius Management Co. of Spartanburg, LLC, KMC Telecom III, LLC, KMC Telecom V, Inc. (collectively known as the Joint Petitioners), AmeriMex Communications Corp.'s Emergency Petition, and letter filings by ITC^DeltaCom Communications, Inc., and Navigator Telecommunications, LLC all seek the same relief. The CLECs request that the Commission issue an Order finding that BellSouth Telecommunications, Inc. may not unilaterally amend or breach its existing interconnection agreements with the CLECs.

On February 4, 2005, the FCC released the TRRO, including its latest Final Unbundling Rules.¹ In the TRRO, the FCC found *inter alia* that requesting carriers are not impaired without access to local switching and dark fiber loops. The FCC also

¹ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) ("Triennial Review Remand Order") ("TRRO").

established conditions under which ILECs would be relieved of their obligation to provide pursuant to section 251(c)(3) unbundled access to DS1 and DS3 loops, as well as DS1, DS3 and dark fiber dedicated transport.

On February 11, 2005, BellSouth issued a Carrier Notification and on February 25, 2005 a Revised Carrier Notification stating that certain portions of the Federal Communications Commission's ("FCC's") *Triennial Review Remand Order* (TRRO) regarding new orders for de-listed Unbundled Network Elements (new adds) are self-effectuating as of March 11, 2005. On March 7, 2005, BellSouth issued yet another Carrier Notification stating that it would continue to accept orders until April 17th but asserts that it will seek a retroactive true-up to resale rates or rates that it unilaterally sets as "commercial" rates.

We find that Paragraph 233 of the TRRO entitled **"Implementation of Unbundling Obligations"** states the following:

We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms and conditions necessary to implement our rule changes. We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.

(TRRO § 233, footnotes omitted).

Thus, the FCC did not unilaterally modify the interconnection agreements that have been approved by this Commission, but instead directed the parties to negotiate amendments to their interconnection agreements to incorporate the FCC's order.

WHEREFORE, IT IS THEREFORE ORDERED THAT:

1. The Parties shall continue to operate under their Commission approved interconnection agreements and shall comply with the change of law and governing law provisions of their respective interconnection agreements until the interconnection agreements are amended consistent with this Commission's orders in this docket or through individual 252 arbitration.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for ITC^DeltaCom, do hereby certify that I have served a copy of the pleading(s) hereinbelow specified via e-mail or regular mail to the following address(es):

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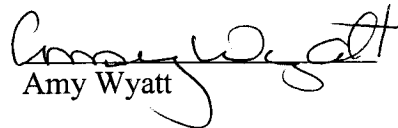
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March 8, 2005